

## Wage and Hour Division, Labor

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AUTHORITY: Secs. 11 and 14, 52 Stat. 1068; sec. 11, 75 Stat. 74; secs. 501 and 602, 80 Stat. 843, 844 (29 U.S.C. 211, 214).

SOURCE: 40 FR 6329, Feb. 11, 1975, unless otherwise noted.

### Subpart A—Retail or Service Establishments, and Agriculture

#### § 519.1 Applicability of the regulations in this subpart.

(a) *Statutory provisions.* Under section 14 of the Fair Labor Standards Act of 1938, as amended, and the authority and responsibility delegated to him/her by the Secretary of Labor (36 FR 8755) and by the Assistant Secretary for Employment Standards (39 FR 33841) the Administrator of the Wage and Hour Division is authorized and directed, to the extent necessary in order to prevent curtailment of opportunities for employment, to provide by regulation or order for the employment, under certificates, of full-time students in retail or service establishments, or in agriculture. That section contains provisions requiring a wage rate in such certificates of not less than 85 percent of the minimum wage applicable under section 6 of the Act, limiting weekly hours of employment, stipulating compliance with the applicable child-labor standards, and safeguarding against

the reduction of the full-time employment opportunities of employees other than full-time students employed under certificates.

(b) *Source of limitations.* Some of the limitations in this subpart are specifically required in section 14(b) of the Act. The other limitations implement the provisions in that section relating to employment opportunities, *i.e.*, the “extent necessary to prevent curtailment of opportunities for employment” and the avoidance of a “substantial probability of reducing the full-time employment opportunities of persons other than those to whom the minimum wage rate authorized” under section 14(b) is applicable.

[40 FR 6329, Feb. 11, 1975; 40 FR 22546, May 23, 1975]

#### § 519.2 Definitions.

(a) *Full-time students.* A *full-time student* for the purpose of this subpart is defined as a student who receives primarily daytime instruction at the physical location of a bona fide educational institution, in accordance with the institution's accepted definition of a full-time student. A full-time student retains that status during the student's Christmas, summer and other vacations. An individual who was such a student immediately prior to vacation will be presumed not to have discontinued such status during vacation if local law requires his/her attendance at the end of the vacation. In the absence of such requirement his/her status during vacation will be governed by his/her intention as last communicated to his/her employer. The phrase in section 14(b) of the statute “regardless of age but in compliance with applicable child-labor laws,” among other things, restricts the employment in a retail or service establishment to full-time students who are at least 14 years of age because of the application of section 3(1) of the Act. There is a minimum age requirement of 16 years in agriculture for employment during school hours and in any occupation declared hazardous by the Secretary of Labor (subpart E-1 of part 570 of this title.) In addition, there is a minimum age restriction of 14 years generally for employment in agriculture of a full-time student outside school hours for the

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school district where such employee is living while so employed, except (1) Minors 12 or 13 years of age may be employed with written parental or guardian consent or they may work on farms where their parents or guardians are employed, and (2) minors under 12 may work on farms owned or operated by their parents or with parental or guardian consent on farms whose employees are exempt from section 6 by section 13 (a)(6)(A) of the Act.

(b) *Bona fide educational institution.* A *bona fide educational institution* is ordinarily an accredited institution. However, a school which is not accredited may be considered a *bona fide educational institution* in exceptional circumstances, such as when the school is too recently established to have received accreditation.

(c) *Retail or service establishment.* *Retail or service establishment* means a retail or service establishment as defined in section 13(a)(2) of the Fair Labor Standards Act. The statutory definition is interpreted in part 779 of this chapter.

(d) *Agriculture.* *Agriculture* means agriculture as defined in section 3(f) of the Fair Labor Standards Act. The statutory definition is interpreted in part 780 of this chapter.

(e) *Student hours of employment.* *Student hours of employment* means hours during which students are employed under full-time student certificates issued under this part and is distinguished from *hours of employment of students*.

(f) *Employer.* Section 519.4 permits an agricultural or retail or service establishment employer to employ not more than six full-time students at subminimum wages on forwarding an application but before certification. For this purpose, the term *employer* looks to the highest structure of ownership or control, and hence may be more than a single retail or service establishment or farm, *e.g.*, the controlling conglomerate or enterprise would be the *employer*. With respect to public employers who operate retail or service establishments (see 29 CFR part 779), the *employer* means the highest structure of control such as the State, municipi-

ality, county or other political subdivision.

[40 FR 6329, Feb. 11, 1975, as amended at 42 FR 58745, Nov. 11, 1977; 43 FR 29000, July 5, 1978]

#### §519.3 Application for a full-time student certificate.

(a) Whenever the employment of full-time students working outside of school hours in agriculture or in a retail or service establishment at wages lower than the minimum applicable under section 6 of the Fair Labor Standards Act is believed to be necessary to prevent curtailment of opportunities for employment and employment of them will not create a substantial probability of reducing the full-time employment opportunities of the other workers, an application for a certificate may be filed by their employer with the appropriate Regional Office of the Wage and Hour Division (or the Denver, Colorado Area Office for Colorado, North Dakota, and South Dakota; the Salt Lake City, Utah area Office for Montana, Utah, and Wyoming; and the Caribbean Office for the area it covers). Such application shall be signed by an authorized representative of the employer.

(b) The application must be filed in duplicate on official forms or exact copies thereof. The forms are available at the offices mentioned in paragraph (a) of this section. The application must contain the information as to the type of products sold or services rendered by the establishment, hours of employment during the preceding twelve-month period or data from previous certificates (or applications) as pertinent to the application, and other information for which request is made on the form.

(c) Separate application must be made for each farm or establishment in which authority to employ full-time students at subminimum wage rates is sought.

(d) Application for renewal of a certificate shall be made either on the same type of form as is used for a new application or on an alternate official form. No certificate in effect shall expire until action on such an application shall have been finally determined, provided that such application has